

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. 17-cr-00965-JB

KIRBY CLEVELAND,

Defendant.

UNOPPOSED MOTION FOR EXTENSION OF PAGE LIMITS

Defendant Kirby Cleveland, through his undersigned counsel, respectfully moves the Court to permit him to file a *Motion to Strike the Notice of Intention to Seek the Death Penalty Because the Federal Death Penalty Act is Unconstitutional Based on the Supreme Court's Decision in Ring and the Fifth and Eighth Amendment to the Constitution* and a *Motion to Preclude the Death Penalty as a Punishment Because the Death Penalty, in and of Itself, is an Unconstitutional Punishment* that exceed the 27-page limit set by D.N.M.LR-Cr.47.9, but do not exceed 45 pages. As grounds for this request, Mr. Cleveland states:

1. Mr. Cleveland, though his counsel, has filed a number of motions challenging the indictment against him as well as motions facially challenging the death penalty. Two of his motions, a *Motion to Strike the Notice of Intention to Seek the Death Penalty Because the Federal Death Penalty Act is Unconstitutional Based on the Supreme Court's Decision in Ring and the Fifth and Eighth Amendment to the Constitution* and a *Motion*

to Preclude the Death Penalty as a Punishment Because the Death Penalty, in and of Itself, is an Unconstitutional Punishment, exceed the 27-page limit set by D.N.M.LR-Cr.47.9, but do not exceed 45 pages.

2. These motions raise important constitutional challenges to the federal death penalty, challenges that are factually and legally complicated. Because of the importance, number, and complexity of the issues addressed, the motions could not be completed within 27 pages, but were completed within 45 pages.

3. On October 1, 2018, counsel for the government Michael Murphy indicated he had no objection to the present motion.

CONCLUSION

For the foregoing reasons, Defendant Kirby Cleveland, through his undersigned counsel, respectfully moves the Court to permit him to file a *Motion to Strike the Notice of Intention to Seek the Death Penalty Because the Federal Death Penalty Act is Unconstitutional Based on the Supreme Court's Decision in Ring and the Fifth and Eighth Amendment to the Constitution* and a *Motion to Preclude the Death Penalty as a Punishment Because the Death Penalty, in and of Itself, is an Unconstitutional Punishment* that exceed the 27-page limit set by D.N.M.LR-Cr.47.9, but do not exceed 45 pages.

Respectfully submitted,

/s/ Theresa M. Duncan
Theresa M. Duncan
Duncan Earnest, LLC
515 Granite NW
Albuquerque, NM 87102
505-842-5196
teri@duncanearnest.com

Donald F. Kochersberger III
BUSINESS LAW SOUTHWEST LLC
320 Gold Ave. SW, Suite 610
Albuquerque, New Mexico 87102-3299
(505) 848-8581 (Voice)
(505) 848-8593 (Facsimile)
Donald@BusinessLawSW.com (E-Mail)

Attorneys for Kirby Cleveland

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of October 2018, I filed the foregoing pleading electronically through the CM/ECF system, which caused counsel for Plaintiff and Defendants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing.

/s/ Theresa M. Duncan
Theresa M. Duncan